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FILED  
HARRISBURG, PA

MAY 30 2002

MARY E. D'ANDREA, CLERK  
Per \_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

PHAN HUE,

Plaintiff,

v.

JAMES UPDIKE, et al.,

Defendants.

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Civil No. 01-CV-1064

(Judge Kane)

(Magistrate Judge Smyser) ✓

**CORRECTIONS DEFENDANTS' MOTION FOR ENLARGEMENT  
OF TIME -FIRST REQUEST**

AND NOW, comes Corrections Defendants, by and through its attorney, Marsha M. Davis, Assistant Counsel, who respectfully requests an enlargement of time to answer Plaintiff's interrogatories based upon the simultaneous filing herewith of Corrections Defendants' Limited Motion for Summary Judgment.

1. Plaintiff, Phan Hue (“Hue”), is presently an inmate confined at the State Correctional Institution at Retreat (“SCI-Retreat”), under Department of Corrections’ (“Department”) Inmate No. DY-0577.

2. Hue filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983, naming Department of Corrections’ employees at SCI-Retreat, Joseph Mataloni, Edward O’Brien and Dale Hazlak.

3. The Corrections’ Defendants filed a Motion to Dismiss the complaint on Feb 8, 2002. That motion to dismiss included among other arguments, a Motion to Dismiss for Failure to Exhaust Administrative Remedies.

4. On April 15, 2002, Magistrate Judge J.A. Smyser filed a report and recommendation that the motion to dismiss be denied and the case remanded to the magistrate judge. That report and recommendation was adopted by the court by order of May 10, 2002.

5. The report and recommendation specifically addressed the motion to dismiss for failure to exhaust in light of the recent holding in *Ray v. Kestes*, \_\_F.3d\_\_ (3d Cir. 2002), 2002 WL 499454. The Court indicated this is an affirmative defense which must be pleaded and proven. “This basis may

be raised as an affirmative defense and can be adjudicated through a summary judgment motion.”

6. On May 15, 2002, Corrections Defendants filed their Answer to Plaintiff’s Complaint.

7. On April 30, 2002, the Plaintiff filed a Motion for Discovery and Inspection. That response is due on or about June 1, 2002.

8. Corrections Defendants have been gathering the information needed to file a thorough answer to Plaintiff’s request.

9. Simultaneously with this motion for enlargement of time the Corrections Defendants are filing their Limited Motion for Summary Judgment.

10. It is not anticipated that the Defendants will need an extension of time in which to file their brief in support of the Motion for Summary Judgment.

11. The Motion for Summary Judgment based upon failure to exhaust is a dispositive motion.

12. Plaintiff’s request for discovery and inspection requires extensive gathering of data which could be determined to be unnecessary by the Court’s decision on Defendants’ Limited Motion for Summary Judgment.

**WHEREFORE**, the Corrections Defendants request that this Court allow an enlargement of time in which to file its response to Plaintiff's request for discovery and inspection.

Respectfully submitted,  
Office of General Counsel

By: *Marsha M. Davis*  
Marsha M. Davis  
Assistant Counsel  
Attorney I.D. No. 28018  
Department of Corrections  
Office of Chief Counsel  
55 Utley Drive  
Camp Hill, Pennsylvania 17011  
(717) 731-0444

Dated: May 30, 2002

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**CERTIFICATE OF SERVICE**

I hereby certify that I am this day depositing in the U.S. mail a true and correct copy of Defendants' Motion for Enlargement of Time – First Request in the above-referenced matter.

Service by first-class mail addressed as follows:

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SCI-Retreat  
660 State Route 11  
Hunlock Creek, Pa. 18621

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Dated: May 30, 2002